School Exclusion: Law, Guidance and Practice

The Scottish Government’s guidance *Included, Engaged and Involved, Part 2: A Positive Approach to Managing School Exclusions*, issued in March 2011, states that school exclusion is an ‘extremely serious’ short-term measure which impacts on all learners, and disproportionately so on the most vulnerable. As such, it should be used as a last resort, and in the context of a system and culture based on prevention and early support and intervention\(^1\). The power to exclude exists in the wider context of education and child law, including the general duty on local authorities to provide school education under the Education (Scotland) Act 1980 and the purposes of education under the Standards in Scotland’s Schools etc Act 2000.

One important positive aspect of the guidance is that it explicitly links school exclusion to the legislative and policy frameworks in place to support children both in education and in terms of their overall wellbeing\(^2\). Exclusion is to be considered in the context of local authorities’ roles under *Getting It Right for Every Child*, their obligations under the Education (Additional Support for Learning) (Scotland) 2004 Act and the Equality Act 2010, and their duty in international law to respect, protect and fulfill the rights of children under the United Nations Convention on the Rights of the Child (UNCRC).

However, while exclusions decreased markedly since 2006/07, disproportionately high exclusion rates persist in respect of vulnerable groups of children, particularly pupils with additional support needs and those living in Scotland’s most deprived communities\(^3\). Despite the guidance’s unequivocal statement that ‘informal’ exclusions are unlawful\(^4\), there is anecdotal evidence that these do occur, in addition to concerns about the consistency and quality of alternative provision for pupils while excluded\(^5\).

In *Behaviour in Scottish Schools 2012*, Headteachers and staff reported increased use of approaches relating to the ethos and values of the school, positive relationships, and a wide range of methods including restorative processes. The study further noted an increased recognition that behaviour at school is linked to factors in children’s lives outwith school, and the need to address their needs.

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\(^1\) Chapter 5.  
\(^2\) Paras 39-42; 147ff.  
\(^4\) Para 197f.  
\(^5\) This includes evidence from this office’s enquiries service and from current research work.
holistically”⁶. This shift in emphasis is in line with the Government’s approach, and is very welcome.

School exclusion and offending

School exclusion has been linked to both offending by and victimisation of children and young people. The connection to young people’s offending is among the major findings of the Edinburgh Study of Youth Transitions and Crime⁷. It shows that school exclusion in the early years after transition from primary to secondary school is a key factor distinguishing young people who continue offending from those who desist in their mid- to late teenage years. School exclusion aggravates what McAra and McVie term a ‘chronic conviction trajectory’⁸.

Formal sanctions including school exclusion are applied disproportionately to certain groups of young people, defined by (self-reported) bad behaviour, but critically also by gender, class/residence in an impoverished neighbourhood, and ‘previous form’, which was identified as a significant predictor of repeat exclusion⁹. The analysis of the Edinburgh Study’s evidence suggests that the ‘labels’ attached to young people seen as ‘troublemakers’ at school not only ‘stick’ and influence young people’s identities, they also interact with young people’s peer group attachments.

In other words, formal sanctions such as school exclusion may be informed by, and impact upon, both young people’s identities and how they are perceived by others. Young people who offend may be left isolated and stigmatised through exclusion from school, adverse contact with the police, and exclusion from their peer groups as a result of being considered too ‘risky’ or ‘dangerous’ to associate with. As a consequence, they may become ‘trapped within a cycle of exclusion’ and further offending¹⁰. The researchers’ policy prescription is to place greater emphasis on ‘educational inclusion’ and to point to the ‘urgent need to develop more imaginative ways of retaining challenging children within mainstream educational provision’¹¹.

Conclusion

There is strong evidence highlighting the adverse effects of school exclusion on young people’s desistance from offending, urging action to keep ‘challenging’ pupils in mainstream schools. Exclusion numbers are decreasing as schools embracing alternative approaches take a more holistic view of children’s wellbeing. However, disproportionate exclusion rates persist in relation to vulnerable children, as do reports of the practice of unhelpful and unlawful ‘informal’ exclusions.

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⁶ Black, Carolyn et al. (2012), Behaviour in Scottish Schools 2012, Scottish Government Social Research, paras 8.3, 8.5 and 8.23.
⁷ More information and a full publications list is at http://www.law.ed.ac.uk/cls/esytc.
Notably, it appears that the positive, inclusive approach in the current guidance and the reported good practice in schools may be at odds with the applicable law dating back to 1975\textsuperscript{12}. For example, the former characterises exclusion as a 'last resort'\textsuperscript{13} and emphasises the rights of both the child who may be excluded and others in the school community. Perhaps reflecting the sentiments of its time, the latter does neither. The 1975 regulations may need to be reviewed with the lessons of the Edinburgh Study regarding educational inclusion of 'challenging' children in mind.

Scotland’s Commissioner for Children and Young People
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\textsuperscript{12} Regulations 4 and 4A of the Schools General (Scotland) Regulations 1975.
\textsuperscript{13} Ch. 5; Para 193.